

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 412 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 and local administration.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 4-15-2-35 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 35. (a) Any regular
- 8 employee may file a complaint if his status of employment is
- 9 involuntarily changed or if he deems conditions of employment to be
- 10 unsatisfactory. However, the complaint procedure shall be initiated as
- 11 soon as possible after the occurrence of the act or condition complained
- 12 of and in no event shall be initiated more than thirty (30) calendar days
- 13 after the employee is notified of a change in his status of employment
- 14 or after an unsatisfactory condition of employment is created. Failure
- 15 to initiate the complaint procedure within such time period shall render
- 16 the complaint procedure unavailable to the employee. The following
- 17 complaint procedure shall be followed:
- 18 Step I: The complaint procedure shall be initiated by a discussion
- 19 of the complaint by the employee and his immediate supervisor
- 20 and, if a mutually satisfactory settlement has not been made
- 21 within two (2) consecutive working days, such complaint may be
- 22 referred to Step II.
- 23 Step II: The complaint shall be reduced to writing and presented
- 24 to the intermediate supervisor. If a mutually satisfactory

1 settlement has not been reached within four (4) consecutive
 2 working days, such complaint may then be referred to the
 3 Appointing Authority.

4 Step III: The Appointing Authority or his designated
 5 representative shall hold such hearings and conduct such
 6 investigations as he deems necessary to render a decision and
 7 shall make such decision in writing within ten (10) consecutive
 8 working days.

9 **Step IV:** Should the appointing authority or his designated
 10 representative not find in favor of the employee, the complaint
 11 may be submitted within fifteen (15) calendar days to the state
 12 personnel director. The director or his designee shall review the
 13 complaint and render a decision within fifteen (15) calendar days.
 14 If the decision is not agreeable to the employee, an appeal may be
 15 submitted by the employee in writing to ~~either~~ the commission ~~no~~
 16 **or arbitration not** later than fifteen (15) calendar days from the
 17 date the employee has been given notice of the action taken by the
 18 personnel director or his designee.

19 ~~After submission of the appeal,~~ **Step V: (A) If an employee**
 20 **elects to submit the appeal to the commission,** the commission
 21 shall, prior to rendering its decision, grant the appealing employee
 22 and the appointing authority a public hearing, with the right to be
 23 represented and to present evidence. With respect to all appeals,
 24 the commission shall render its decision within thirty (30) days
 25 after the date of the hearing on the appeal. If the commission finds
 26 that the action against the employee was taken on the basis of
 27 politics, religion, sex, age, race or because of membership in an
 28 employee organization, the employee shall be reinstated to his
 29 position without loss of pay. In all other cases, **unless judicial**
 30 **review of the decision is requested in accordance with**
 31 **IC 4-21.5-5,** the appointing authority shall follow the
 32 ~~recommendation decision~~ of the commission which may include
 33 reinstatement and payment of salary or wages lost by the
 34 employee which may be mitigated by any wages the employee
 35 earned from other employment during a dismissed or suspended
 36 period.

37 ~~If the recommendation of the commission is not agreeable to the~~
 38 ~~employee, the employee, within fifteen (15) calendar days from receipt~~
 39 ~~of the commission recommendation, may elect to submit the complaint~~
 40 ~~to arbitration. The cost of arbitration shall be shared equally by the~~
 41 ~~employee and the state of Indiana. The commissioner of labor shall~~
 42 ~~prepare a list of three (3) impartial individuals trained in labor~~
 43 ~~relations; and from this list each party shall strike one (1) name. The~~
 44 ~~remaining arbitrator shall consider the issues which were presented to~~
 45 ~~the commission and shall afford the parties a public hearing with the~~
 46 ~~right to be represented and to present evidence. The arbitrator's~~

findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission:

Step V: (B) If an employee elects to submit the appeal to arbitration, an arbitrator must be selected from:

- (i) the American Arbitration Association; or
- (ii) the Federal Mediation and Conciliation Service, if an arbitrator is not available from the American Arbitration Association;

according to selection procedures established by the arbitrator's association or service. The costs of arbitration under this Step shall be shared equally by the employer and the employee or the employee's representative.

Step VI: The decision of the commission under Step V(A) or the arbitrator under Step V(B) is a final order subject to judicial review in accordance with IC 4-21.5-5. The commission's or arbitrator's decision in Step V is binding unless a party requests judicial review.

(b) An employee who files a complaint under subsection (a) may choose a representative who is inside or outside the employee's agency or facility to represent the employee during Steps III through VI of the complaint procedure.

(c) If the employer does not comply with the timelines set forth in subsection (a), the employee's complaint proceeds to the next Step of the complaint procedure.

(d) Subsections (e) through (k) apply to an individual who is employed as a teacher in a state institution under:

- (1) IC 11-10-5;
- (2) IC 12-24-3;
- (3) IC 16-33-3;
- (4) IC 16-33-4;
- (5) IC 20-15; or
- (6) IC 20-16.

(e) Instead of the grievance procedure described in subsections (a) through (c), the grievance procedure established by subsections (f) through (k) applies to a teacher who is described in subsection (d).

(f) If a teacher wishes to file a grievance concerning an action taken by the teacher's employer, the grievance must be filed according to the following procedure:

- (1) The teacher may file a grievance with the teacher's immediate supervisor not more than thirty (30) working days after the action taken by the employer occurs.
- (2) The immediate supervisor shall respond to a grievance filed under subdivision (1) not more than two (2) working days after the immediate supervisor receives the grievance.
- (3) If the teacher is dissatisfied with the response under subdivision (2), the teacher may file a written grievance with

the teacher's intermediate supervisor.

(4) The intermediate supervisor shall respond to a written grievance filed under subdivision (3) not more than four (4) working days after the intermediate supervisor receives the written grievance.

(5) If the teacher is dissatisfied with the response under subdivision (4), the teacher may file a written grievance with the superintendent of the institution in which the teacher is employed.

(6) The superintendent shall respond to a written grievance filed under subdivision (5) not more than ten (10) working days after the superintendent receives the written grievance.

(7) If the teacher is dissatisfied with the response under subdivision (6), the teacher may file a written grievance with the state personnel director appointed under IC 4-15-1.8-3 not more than fifteen (15) working days after the teacher receives the response under subdivision (6).

(8) The state personnel director shall respond to a written grievance filed under subdivision (7) not more than fifteen (15) working days after the state personnel director receives the written grievance.

(9) If the teacher is dissatisfied with the response under subdivision (8), the teacher may file a written grievance with the state employees' appeals commission under 33 IAC 1 not more than fifteen (15) working days after the teacher receives the response under subdivision (8). In the alternative, the teacher may submit the grievance directly to arbitration as described in subdivision (11).

(10) The state employees' appeals commission shall set a hearing date on the written grievance filed under subdivision (9) not more than thirty (30) working days after the state employees' appeals commission receives the written grievance and shall render a decision not more than thirty (30) working days after the date of the hearing unless this period is extended by the written consent of all parties.

(11) If the teacher is dissatisfied with the response under subdivision (10), the teacher may submit the grievance to arbitration not more than fifteen (15) working days after the teacher receives the response under subdivision (10).

(12) The arbitrator to whom the grievance is submitted under subdivision (9) or (11) shall hold a hearing and shall render a decision not more than thirty (30) working days after the hearing.

(g) An arbitrator to whom a grievance is submitted under subsection (f)(9) or (f)(11) must be selected from:

(1) the American Arbitration Association; or

(2) the Federal Mediation and Conciliation Service, if an

1 arbitrator is not available from the American Arbitration
 2 Association;
 3 according to selection procedures established by the arbitrator's
 4 association or service.

5 (h) Costs of arbitration under subsections (f) through (k) shall
 6 be shared equally by the employer and the teacher or the teacher's
 7 organization.

8 (i) If the employer does not comply with the timelines set forth
 9 in subsection (f), the grievance proceeds to the next step of the
 10 procedure.

11 (j) A teacher who files a grievance under subsections (f) through
 12 (k) may choose a representative from inside or outside the
 13 institution to represent the teacher in subsection (f)(5) through
 14 (f)(12) of the grievance procedure under subsections (f) through
 15 (k).

16 (k) The decision of the arbitrator is a final order subject to
 17 judicial review in accordance with IC 4-21.5-5.

18 SECTION 2. IC 5-10-8-6.5, AS ADDED BY P.L.233-1999,
 19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2003]: Sec. 6.5. (a) A member of the general assembly may
 21 elect to participate in either:

- 22 (1) the plan of self-insurance established by the state police
- 23 department under section 6 of this chapter;
- 24 (2) the plan of self-insurance established by the state personnel
- 25 department under section 7 of this chapter; or
- 26 (3) a prepaid health care delivery plan established under section
- 27 7 of this chapter.

28 (b) A former member of the general assembly who meets the criteria
 29 for participation in a group health insurance program provided under
 30 section ~~8(e)~~ 8 or 8.1 of this chapter may elect to participate in either:

- 31 (1) the plan of self-insurance established by the state police
- 32 department under section 6 of this chapter; or
- 33 (2) a group health insurance program provided under section ~~8(e)~~
- 34 8 or 8.1 of this chapter.

35 (c) A member of the general assembly or former member of the
 36 general assembly who chooses a plan described in subsection (a)(1) or
 37 (b)(1) shall pay any amount of both the employer and the employee
 38 share of the cost of the coverage that exceeds the cost of the coverage
 39 under the new traditional plan.

40 SECTION 3. IC 5-10-8-8, AS AMENDED BY P.L.13-2001,
 41 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2003]: Sec. 8. (a) This section applies only to the state and
 43 employees who are not covered by a plan established under section 6
 44 of this chapter.

45 (b) ~~After June 30, 1986,~~ **Except as provided in subsection (k),** the
 46 state shall provide a group health insurance plan to each retired
 47 employee:

(1) whose retirement date is:

(A) after June 29, 1986, for a retired employee who was a member of the field examiners' retirement fund;

(B) after May 31, 1986, for a retired employee who was a member of the Indiana state teachers' retirement fund; or

(C) after June 30, 1986, for a retired employee not covered by clause (A) or (B);

(2) who will have reached fifty-five (55) years of age on or before the employee's retirement date but who will not be eligible on that date for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; **and**

(3) who will have completed:

(A) before January 1, 2004, twenty (20) years; or

(B) after December 31, 2003, fifteen (15) years;

of creditable employment with a public employer on or before the employee's retirement date, ten (10) years of which shall have been completed immediately preceding the retirement. **and**

~~(4) who will have completed at least fifteen (15) years of participation in the retirement plan of which the employee is a member on or before the employee's retirement date.~~

(c) The state shall provide a group health insurance program to each retired employee:

(1) who is a retired judge;

(2) whose retirement date is after June 30, 1990;

(3) who is at least sixty-two (62) years of age;

(4) who is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and

(5) who has at least eight (8) years of service credit as a participant in the Indiana judges' retirement fund, with at least eight (8) years of that service credit completed immediately preceding the judge's retirement.

(d) The state shall provide a group health insurance program to each retired employee:

(1) who is a retired participant under the prosecuting attorneys retirement fund;

(2) whose retirement date is after January 1, 1990;

(3) who is at least sixty-two (62) years of age;

(4) who is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and

(5) who has at least ten (10) years of service credit as a participant in the prosecuting attorneys retirement fund, with at least ten (10) years of that service credit completed immediately preceding the participant's retirement.

(e) The state shall make available a group health insurance program to each former member of the general assembly or surviving spouse of each former member, if the former member:

- (1) is no longer a member of the general assembly;
- (2) is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq. or, in the case of a surviving spouse, the surviving spouse is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and
- (3) has at least ten (10) years of service credit as a member in the general assembly.

A former member or surviving spouse of a former member who obtains insurance under this section is responsible for paying both the employer and the employee share of the cost of the coverage.

(f) The group health insurance program required under subsections (b) through (e) **and subsection (k)** must be equal to that offered active employees. The retired employee may participate in the group health insurance program if the retired employee pays an amount equal to the employer's and the employee's premium for the group health insurance for an active employee and if the retired employee within ninety (90) days after the employee's retirement date files a written request for insurance coverage with the employer. However, the employer may elect to pay any part of the retired employee's premium with respect to insurance coverage under this chapter.

(g) Except as provided in subsection (j), a retired employee's eligibility to continue insurance under this section ends when the employee becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq., or when the employer terminates the health insurance program. A retired employee who is eligible for insurance coverage under this section may elect to have the employee's spouse covered under the health insurance program at the time the employee retires. If a retired employee's spouse pays the amount the retired employee would have been required to pay for coverage selected by the spouse, the spouse's subsequent eligibility to continue insurance under this section is not affected by the death of the retired employee. The surviving spouse's eligibility ends on the earliest of the following:

- (1) When the spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the employer terminates the health insurance program.
- (3) Two (2) years after the date of the employee's death.
- (4) The date of the spouse's remarriage.

(h) This subsection does not apply to an employee who is entitled to group insurance coverage under IC 20-6.1-6-1(c). An employee who is on leave without pay is entitled to participate for ninety (90) days in any health insurance program maintained by the employer for active employees if the employee pays an amount equal to the total of the employer's and the employee's premiums for the insurance.

(i) An employer may provide group health insurance for retired employees or their spouses not covered by this section and may provide group health insurance that contains provisions more favorable to

retired employees and their spouses than required by this section. A public employer may provide group health insurance to an employee who is on leave without pay for a longer period than required by subsection (h).

(j) An employer may elect to permit former employees and their spouses, including surviving spouses, to continue to participate in a group health insurance program under this chapter after the former employee (who is otherwise qualified under this chapter to participate in a group insurance program) or spouse has become eligible for Medicare coverage as prescribed by 42 ~~U.S.C.A.~~ **U.S.C.** 1395 et seq. An employer who makes an election under this section may require a person who continues coverage under this subsection to participate in a retiree health benefit plan developed under section 8.3 of this chapter.

(k) The state shall provide a group health insurance program to each retired employee:

(1) who was employed as a teacher in a state institution under:

(A) IC 11-10-5;

(B) IC 12-24-3;

(C) IC 16-33-3;

(D) IC 16-33-4;

(E) IC 20-15; or

(F) IC 20-16;

(2) who is at least fifty-five (55) years of age on or before the employee's retirement date;

(3) who is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and

(4) who has at least:

(A) fifteen (15) years of service credit as a participant in the retirement fund of which the employee is a member on or before the employee's retirement date; or

(B) ten (10) years of service credit completed immediately preceding the participant's retirement.

SECTION 4. IC 5-10.2-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) Except as provided in subsection ~~(e)~~ **(f)**, in computing the retirement benefit for a nonteacher member, "average of the annual compensation" means the average annual compensation calculated using the twenty (20) calendar quarters of service in a position covered by the retirement fund before retirement in which the member's annual compensation was the highest. However, in order for a quarter to be included in the twenty (20) calendar quarters, the nonteacher member must have performed service throughout the calendar quarter. All twenty (20) calendar quarters do not have to be continuous but they must be in groups of four (4) consecutive calendar quarters. The same calendar quarter may not be included in two (2) different groups.

(b) This subsection does not apply to a teacher member described in subsection (c). In computing the retirement benefit for a

teacher member, "average of the annual compensation" means the average annual compensation for the five (5) years of service before retirement in which the member's annual compensation was highest. In order for a year to be included in the five (5) years, the teacher member must have received for the year credit under IC 21-6.1-4-2 for at least one-half (1/2) year of service. The five (5) years do not have to be continuous.

(c) **This subsection applies to a member of the Indiana state teachers' retirement fund:**

(1) who is serving as a member of the general assembly on April 29, 2003; or

(2) is elected or appointed to the general assembly after April 29, 2003.

In computing the retirement benefit for a teacher member described in this subsection for years of service to which IC 21-6.1-5-7.5 does not apply, "average of the annual compensation" means the annual compensation for the one (1) year of service before retirement in which the member's annual compensation was highest. In order for a year to be used, the teacher member must have received for the year credit under IC 21-6.1-4-2 for at least one-half (1/2) year of service.

(d) Subject to IC 5-10.2-2-1.5 "annual compensation" means:

(1) the basic salary earned by and paid to the member plus the amount that would have been part of that salary but for:

(1) (A) the state's, a school corporation's, a participating political subdivision's, or a state educational institution's (as defined in IC 20-12-0.5-1) paying the member's contribution to the fund for the member; or

(2) (B) the member's salary reduction agreement established under Section 125, 403(b), or 457 of the Internal Revenue Code; and

(2) in the case of a member described in subsection (c) and for years of service to which IC 21-6.1-5-7.5 does not apply, the basic salary that was not paid during the year but would have been paid to the member during the year under the member's employment contracts if the member had not taken any unpaid leave of absence to serve in an elected position.

The portion of a back pay award or a similar award that the board determines is compensation under an agreement or under a judicial or an administrative proceeding shall be allocated by the board among the years the member earned or should have earned the compensation. Only that portion of the award allocated to the year the award is made is considered to have been earned during the year the award was made. Interest on an award is not considered annual compensation for any year.

(e) Compensation of no more than two thousand dollars (\$2,000)

received from the employer in contemplation of the member's retirement, including severance pay, termination pay, retirement bonus, or commutation of unused sick leave or personal leave, may be included in the total annual compensation from which the average of the annual compensation is determined, if it is received:

(1) before the member ceases service; or

(2) within twelve (12) months after the member ceases service.

~~(e)~~ (f) This section applies to a member of the general assembly:

(1) who is a participant in the legislators' retirement system established under IC 2-3.5;

(2) who is also a member of the public employees' retirement fund or the state teachers' retirement fund; and

(3) whose years of service in the general assembly may not be considered in determining the average of the annual compensation under this section, as provided in IC 2-3.5-1-2(b)(2) or IC 2-3.5-3-1(c).

The board shall use the board's actuarial salary increase assumption to project the salary for any previous year needed to determine the average of the annual compensation."

Page 3, after line 17, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE JULY 1, 2003] **IC 5-10.2-4-3, as amended by this act, applies to members of the Indiana state teachers' retirement fund who retired before July 1, 2003, and to members of the Indiana state teachers' retirement fund who retire after June 30, 2003. However, IC 5-10.2-4-3, as amended by this act, applies only to benefits first payable after June 30, 2003.**"

Renumber all SECTIONS consecutively.

(Reference is to ESB 412 as printed April 4, 2003.)

Representative Pelath